

FILED

2018 MAR 23 PM 12:03

DEPUTY

CIVIL ACTION NO.

EP 18CV0094

RESPONDENT.

I. NATURE OF THE ACTION

Lots 13 and 14, BLOCK 9, Friedman Estates Unit 1, an Addition to the City of El Paso, El Paso County, Texas, according to the plat thereof, recorded in Volume 37, Page 4, Plate Records of El Paso County, Texas,

hereinafter referred to as the “Respondent Real Property.”

II.
STATUTORY BASIS FOR FORFEITURE

This is a civil forfeiture action *in rem* brought against the Respondent Real Property for the violation of Title 21 U.S.C. § 856(a)(2), and subject to forfeiture to the United States pursuant to Title 21 U.S.C. § 881(a)(7).

21 U.S.C. § 881. Forfeitures

(a) Subject Property

The following shall be subject to forfeiture to the United States and no property right shall exist in them:

* * *

(7) All real property, including any right, title, and interest (including any leasehold interest) in the whole of any lot or tract of land and any appurtenances or improvements, which is used, or intended to be used, in any manner or part, to commit, or to facilitate the commission of, a violation of this subchapter punishable by more than one year's imprisonment.

III.
JURISDICTION AND VENUE

Under 28 U.S.C. § 1345, this Court has jurisdiction over an action commenced by the United States, and under 28 U.S.C. § 1355(a), jurisdiction over an action for forfeiture. This Court has *in rem* jurisdiction over the Respondent Real Property under 28 U.S.C. §§ 1355(b) and 1395(b). Venue is proper in this district pursuant to 28 U.S.C. § 1355(b)(1)(A), because the acts or omissions giving rise to the forfeiture occurred in this District, and pursuant to 28 U.S.C. §§ 1355(b)(1)(B) and 1395(b) because the Respondent Real Property was seized in this District.

IV.
FACTS IN SUPPORT OF FORFEITURE

On April 19, 2017, a Sealed Indictment (ECF No. 14) was returned against Defendant Ofelia Marmolejo ("Marmolejo"), in the Western District of Texas, El Paso Division, under Criminal Case Number: EP-16-CR-01298-FM for the violations of Title 21 U.S.C. §§ 846, 841(a)(1) and 856(a)(2). On December 20, 2017, a Superseding Indictment (ECF No. 433) was

returned against Marmolejo for the violations of Title 21 U.S.C. §§ 846, 841(a)(1), 856(a)(2) and 860.

On January 31, 2018, Marmolejo pled guilty to a Felony Information (ECF No. 479), pursuant to a written plea agreement, charging her with violation 18 U.S.C. § 4, Misprision of a Felony, and stated within the Factual Basis of the Plea Agreement that she, "...having knowledge of the actual commission of a felony cognizable by a Court of the United States, that is, while managing and controlling a building, room and enclosure, at 11412 Philip Drive, Socorro, Texas, as an owner and mortgagee, did knowingly and intentionally made available for use, with and without compensation, said building, room and enclosure for the purpose of unlawfully manufacturing, storing, distributing, and using cocaine, a Schedule II controlled substance, in violation of Title 21, United States Code, Section 856(a)(2), within 1,000 feet of the real property comprising Campestre Elementary School, an elementary school, did conceal and did not, as soon as possible, make known the same to some judge or other person in civil or military authority under the United States, all in violation of Title 18, United States Code, Section 4."

As part of the written plea agreement, Marmolejo agreed to surrender and relinquish any and all rights, title and interest in, and all claims to the Respondent Property in order that said property may be disposed of by the United States of America in accordance with law. Marmolejo admitted and affirmed that the Respondent Property was used to facilitate the commission of the Title 21 violation as described in the factual basis. Specifically, violations of Title 21, United States Code, Sections 846 and 841, as wells as Title 21, United State Code, Section 856(a)(2). Marmolejo is set to be sentenced on April 24, 2018.

On or about August 26, 2014, and continuing through and including on or about June 28, 2016, in the Western District of Texas, Marmolejo, while managing and controlling a building, room and enclosure, at the Respondent Real Property, as an owner and mortgagee, she knowingly and intentionally made available for use, with and without compensation, said building, room and enclosure for the purpose of unlawfully manufacturing, storing, distributing, and using cocaine, a schedule II controlled substance.

Specifically, instead of making it known that the Respondent Real Property was being used to distribute narcotics, Marmolejo actively engaged in concealing the crime from authorities. Marmolejo would relay information between co-conspirators about the presence of law enforcement in the community, package and store illicit proceeds from narcotics trafficking, and relay information about which co-conspirators were present and whether or not any dealing would take place.

Marmolejo admitted, while managing and controlling a building, specifically the Respondent Real Property, as the owner, she knowingly and intentionally made the Respondent Real Property available for the purpose of unlawfully manufacturing, storing, distributing, and using cocaine, a schedule II controlled substance. Furthermore, Marmolejo admitted the activity described above occurred within 1,000 feet of a school, specifically, Campestre Elementary School, in Socorro, Texas, which resides in the Western District of Texas.

Based upon the foregoing, the Respondent Real Property is subject to forfeiture pursuant to 21 U.S.C. § 881(a)(7), as property involved in violation of 21 U.S.C. § 856(a)(2).

V.
PRAYER

WHEREFORE, Petitioner, United States of America, prays that due process issue to enforce the forfeiture of the Respondent Real Property, that due notice, pursuant to Rule G(4), be

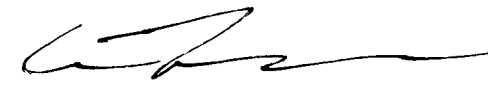
given to all interested parties to appear and show cause why forfeiture should not be decreed,¹ that a warrant for an arrest in rem be ordered, that the Respondent Real Property be forfeited to the United States of America, that the Respondent Real Property be disposed of in accordance with the law, and for any such further relief as this Honorable Court deems just and proper.

Dated: March 23, 2018
El Paso, Texas

Respectfully submitted,

JOHN F. BASH
United States Attorney for the
Western District of Texas

By:



Antonio Franco, Jr.
Assistant United States Attorney
Texas Bar No. 00784077
700 E. San Antonio Ave., Suite 200
El Paso, Texas 79901
Tel: (915) 534-6884
Fax: (915) 534-3461

¹Appendix A, Notice of Complaint of Forfeiture, which is being filed along with this complaint, will be sent to those known to the United States to have an interest in the Respondent Real Property.

VERIFICATION

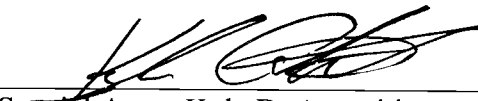
Special Agent, Kyle D. Antonitis, declares and says that:

I am a Special Agent with the Federal Bureau of Investigations, assigned to the El Paso Field Office, and I am the investigator responsible for the accuracy of the information provided in this complaint.

I have read the above Verified Complaint for Forfeiture and know the contents thereof based upon my personal participation in the investigation, my conversations with others, and my review of documents and other evidence. Based upon information and belief, the allegations contained in the Verified Complaint for Forfeiture are true and correct. Because the Verified Complaint is being submitted for the limited purpose of stating sufficiently detailed facts to support a reasonable belief that the government will be able to meet its burden of proof at trial, it does not contain every fact known by me or the United States. Where the actions, conversations, and statements of others are related therein, they are related in substance and in part, unless otherwise stated.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Executed on this the 23 day of March, 2018.



Special Agent Kyle D. Antonitis
Federal Bureau of Investigations

MAR 23 2018

MAR 23 2010
CLERK, U.S. DISTRICT COURT
WESTERN DISTRICT OF TEXAS
BY EB DEPUTY

§§

CIVIL ACTION NO.

Y.

EP 18CV0094

RESPONDENT.

2

claimant shall be by direct notice. Accompanying this notice is the Verified Complaint for Forfeiture which has been filed in this cause and which describes the Respondent Real Property. Pursuant to Supplemental Rule G(4)(b), any person claiming an interest in the Respondent Real Property who has received direct notice of this forfeiture action must file a Claim in compliance with Rule G(5)(a), with the court within **thirty-five (35) days after the notice was sent, if delivered by mail (if mailed, the date sent is provided below), or within 35 days of the date of delivery, if notice was personally served.** An Answer or motion under Rule 12 of the Federal Rules of Civil Procedure must then be filed within **twenty-one (21) days** of the Claim being filed. The Claim and Answer must be filed with the Clerk of the Court, 525 Magoffin, Suite 105, El Paso, Texas 79901, and copies of each must be served upon Assistant United States Attorney Antonio Franco, Jr., 700 E. San Antonio Ave, Suite 200, El Paso, Texas 79901, or default and forfeiture will be ordered. *See* 18 U.S.C. § 983(a)(4)(A) and Rule G(5) of the Supplemental Rules for Admiralty or Maritime Claim and Asset Forfeiture Actions.

Failure to follow the requirements set forth above will result in a judgment by default taken against you for the relief demanded in the complaint.

APPENDIX A

DATE NOTICE SENT: _____

JOHN F. BASH
United States Attorney
for the Western District of Texas

By: _____

Antonio Franco, Jr.
Assistant United States Attorney
Texas Bar No. 00784077
700 E. San Antonio Ave., Suite 200
El Paso, TX 79901
Tel: 915-534-6884
Fax: 915-534-3461

JUDGE FRANK MONTALVO

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

§

CIVIL ACTION NO.

V.

**REAL PROPERTY AND
APPURTENANCES LOCATED AT
11412 PHILIP DRIVE, SOCORRO,
TEXAS 79927, WITH ALL
IMPROVEMENTS AND
ATTACHMENTS THEREON,**

RESPONDENT.

EP 18C-094

FOR FORFEITURE OF RESPONDANT REAL PROPERTY AND FOR NOTICE

Title 21 U.S.C § 881(a)(7) for violation of Title 21 U.S.C. § 856(a)(2). IT IS THEREFORE

ORDERED that the Department of Homeland Security for the Western District of Texas, or other authorized law enforcement officer or any other person or organization authorized by law, be commanded to post the Notice of Complaint for Forfeiture in accordance with Rule G of the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions, Fed.R.Civ.P., and Title 18 U.S.C. § 985(c)(1)(B), by affixing a copy of the Notice of Complaint

for Forfeiture in this action, in a conspicuous place upon the premises and, if applicable, by leaving a copy of the Notice of Complaint for Forfeiture and accompanying documents with the occupant of the premises, if any, until further order of the Court, and to make my return as provided by law and said Order has been executed.

SIGNED this _____ day of _____, 2018.

UNITED STATES DISTRICT JUDGE

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

UNITED STATES OF AMERICA

(b) County of Residence of First Listed Plaintiff

(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Antonio Franco, Jr., Assistant United States Attorney
700 E. San Antonio, Suite 200
El Paso, Texas 79901 (915) 534-6884

DEFENDANTS

REAL PROPERTY AND APPURTENANCES LOCATE AT 11412
PHILIP DR., SOCORRO, TEXAS 79927, WITH ALL
IMPROVEMENTS AND ATTACHMENTS THEREON

County of Residence of First Listed Defendant **EL PASO COUNTY**

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

EP 18 CV 0094

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☒ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☐ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input checked="" type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 690 Other	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from Another District (specify)
☐ 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
21 U.S.C. § 881(a)(7)

Brief description of cause:

Property used to facilitate violations of 21 U.S.C. § 856(a)(2)

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND:

☐ Yes ☒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE **FRANK MONTALVO**DOCKET NUMBER **EP-16-CR-1298-FM**

DATE

03/23/2018

SIGNATURE OF ATTORNEY OF RECORD

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE